

REMIGIO S. ONG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS (EIGHTH DIVISION), RESPONDENTS.

G.R. No. 139006. November 27, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

At bar is a petition for certiorari under Rule 45 of the 1997 Rules of Civil Procedure, filed by petitioner Remigio S. Ong seeking to reverse and set aside the Decision, dated March 19, 1999; and, Resolution, dated June 3, 1999, of the Honorable Court of Appeals in CA-G.R. No. 18421 entitled "People of the Philippines vs. Remigio S. Ong."

The antecedent facts, as found by the trial court are quoted hereunder, as follows:

That private complainant Marcial de Jesus and accused Remigio Ong are both businessmen who came to know each other since 1988 as supplier(s) of some companies. Marcial de Jesus owns the Sevrin Integrated Resources located at 3184 E. Rivera St., Pasay City, and accused Remigio Ong, the Master Metal Craft with business address at 562 Tomas Mapua St., Sta. Cruz, Manila. Remigio Ong, in fact at one time retained the services of Marcial de Jesus as adviser on technical and financial matters and as President of Erocool Industries, a company controlled by the former.

That on December 17, 1992, Remigio Ong approached Marcial de Jesus in his place of work in Pasay City and requested to be accommodated a loan of P130,000.00 which he needed to pay the 13th month pay of his employees at the Master Metal Craft. Complainant De Jesus obliged by issuing Ong Producers Bank check No. 489427 (Exh. "A") payable to Ong's Master Metal Craft. In order to insure the repayment, complainant required Mr. Ong to issue a post-dated check for the same amount to become due on January 16, 1993. Mr. Ong therefore issued FEBTC Check No. 381937, dated January 16, 1993 (Exh. "B"). Exh. "A-4" show(s) that Remigio Ong negotiated the Producers Bank Check issued to him by De Jesus on the same day, December 17, 1992, although this is at variance with Exh. "F-6" (FEBTC statement of account of Remigio Ong) which show(s) that the check was deposited in Ong's account only on May 26, 1993 and debited for the said amount of P130,000.00. At any rate, whatever the date the loan check was encashed by Remigio Ong, what is certain was that the check was encashed for value and debited to Ong's account as shown by Exh. "F-6."

In the meanwhile, Ong's FEBTC check (Exh. "B") dated January 16, 1993 was deposited by Marcial De Jesus in his account at Producers Bank on May 26, 1993 (same date Remigio Ong deposited De Jesus' check) which was promptly returned the following day by FEBTC for reason that it was drawn against insufficient funds (DAIF), meaning, the check was dishonored by FEBTC for lack of sufficient funds (Exh. "B" and "C" - check No. 381937 and Return advise, respectively). That thereafter, De Jesus verbally notified Remigio Ong of his bounced check several times but unacted (sic) until made a written formal demand (Exh. "D") on September 10, 1993. For failure of Ong to make arrangement for the payment or replacement of the bounced check, De Jesus filed this case.[1]

After trial on the merits, the court a quo rendered a decision, the dispositive portion of which reads as follows:

WHEREFORE, the Court finds the accused, Remigio Ong y Salinas, guilty beyond reasonable doubt for Violation of Section 1, Batas Pambansa Blg. 22, otherwise known as the Bouncing Check Law, and sentences him to suffer a straight penalty of six (6) months and one (1) day of imprisonment, to pay a fine of P150,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs. The accused is likewise ordered to pay civil indemnity in the amount of P130,000.00.

SO ORDERED.[2]

On appeal, petitioner alleged that the subject check was not issued "on account or for value;" and, that a mere photocopy of the demand letter is not admissible in evidence. The Court of Appeals, however, dismissed the appeal for lack of merit and affirmed the trial court's decision, dated May 5, 1995, in toto.[3]

Hence, the instant petition for certiorari wherein petitioner makes the following assignment of errors:

I

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT CONVICTING PETITIONER OF THE CHARGE OF VIOLATION OF BATAS PAMBANSA BLG. 22 WHEN THE QUESTIONED FEBTC CHECK WAS ONLY A CONTINGENT PAYMENT OF PETITIONER'S COMPANY LOAN WHICH WAS NOT BEEN (sic) PROVEN TO HAVE BEEN EXTENDED AND ACTUALLY USED, THUS, THE SAID CHECK WAS NOT ISSUED "TO APPLY ON ACCOUNT OR FOR VALUE" WITHIN THE CONTEMPLATION OF THE LAW.

II

THE HONORABLE COURT OF APPEALS LIKEWISE SERIOUSLY ERRED IN AFFIRMING THE LOWER COURT'S DECISION CONVICTING PETITIONER ON THE BASIS OF MERE XEROX DEMAND LETTER (sic) CONTRARY TO SECTION 4, RULE 130, REVISED RULES OF COURT AND PROOF OF SUCH DEMAND IS JURISDICTIONAL REQUIREMENT IN BATAS PAMBANSA BLD. (sic) 22.[4]

In gist, petitioner contends that the Court of Appeals affirmed the judgment of conviction of the lower court despite the lack of evidence of receipt of the proceeds of the loan obligation from complainant Company. In other words, there was no evidence that the Producers Bank check issued by private complainant in his favor was ever encashed by him. Therefore, he alleges, the subject check cannot be considered drawn and issued "to apply on account or for value." Furthermore, according to petitioner, the Court of Appeals erroneously affirmed the conviction in complete disregard of the basic and mandatory practice of companies in executing vouchers and/or invoice as proof of receipt of the loan obligation which is clearly lacking and absent in the case at bar. Hence, he reiterates, that the bounced check was not drawn and issued to apply on account or for value.[5]

Petitioner further asseverates that the Court of Appeals erred in affirming the trial court's decision on the basis of a mere photocopy of the demand letter and without proof of loss of the original as required by law. He contends that proof of demand is jurisdictional.[6]

Petitioner's contentions are devoid of merit.

The trial court as well as the Court of Appeals have found that the prosecution clearly established the existence of the loan and the subsequent encashment of the Producers Bank check. It has also been established that petitioner issued the subject FEBTC check, and that said check was subsequently dishonored for being drawn against insufficient funds. These facts irretrievably bring petitioner within the purview of Section 1 of B.P. Blg. 22.

On petitioner's contention that the check was not drawn on account or for value, the law and jurisprudence is clear on this matter. In the case of Cruz vs. Court of Appeals,[7] this Court had occasion to rule that:

What the law punishes is the issuance of a bouncing check, not the purpose for which it was issued nor the terms and conditions relating to its issuance. The mere act of issuing a worthless check is *malum prohibitum*.

The gravamen of the offense punished by B.P. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the non-payment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation.[8]

Petitioner's argument that the subject check was issued without consideration is inconsequential. The law invariably declares the mere act of issuing a worthless check as *malum prohibitum*. We quote with approval the appellate court's findings on this matter:

In actions based upon a negotiable instrument, it is unnecessary to aver or prove consideration, for consideration is imported and presumed from the fact that it is a negotiable instrument. The presumption exists whether the words "value received" appear on the instrument or not (Agbayani, A.F., Commentaries and Jurisprudence on the Commercial Laws of the Philippines, 1989 Ed., Vol. 1, p. 227, emphasis supplied). Furthermore, such contention is also inconsequential in Batas Pambansa Blg. 22.

xxx

In *Que vs. People* (154 SCRA 161), the Supreme Court stated that it is the clear intention of the framers of Batas Pambansa Blg. 22 to make the mere act of issuing a worthless check *malum prohibitum*. In prosecutions for violation of B.P. Blg. 22, therefore, prejudice or damage is not a pre-requisite for conviction. In the more recent case of *People vs. Nitafan* (215 SCRA 79), the Supreme Court ruled that the argument surrounding the issuance of the checks need not be first looked into, since the law clearly provides that the mere issuance of any kind of check, regardless of the intent of the parties; i.e., whether the check was intended merely to serve as a guarantee or deposit, but which check was subsequently dishonored, makes the person who issued the check liable. The intent of the law is to curb the proliferation of worthless checks and to protect the stability and integrity of checks as a means of payment of obligation (*Lazaro vs. Court of Appeals*, 227 SCRA 723, 726-727).[9]

Petitioner claims that the Court of Appeals erred in affirming the trial court's decision on the basis of a photocopy of the demand letter, arguing that the prosecution failed to produce the original thereof. A perusal of the trial court's decision, however, will reveal that it had satisfactorily ruled on this issue, thus:

In regards to the alleged inadmissibility of a Xerox copy of the demand letter (Exh. "D") in the absence of proof of loss of the original, said objection is unavailing in the light of the fact that the original has already been shown and identified in Court when complainant Marcial De Jesus testified on it on direct examination (TSN: Febre, p. 17, Aug. 2, 1994) and cross examined on it by defense counsel Atty. Bihag, thus --

Atty. Bihag:

Q: In other words, George De Ocampo that time you sent this demand letter was a member of Euro Cool Craft? (TSN: Febre, p. 27, Aug. 2, 1994).[10]

It is well-settled in criminal jurisprudence that where the issue is one of credibility of witnesses, the appellate court will generally not disturb the findings of the trial court, considering it was in a better position to settle such issue. Indeed, the trial court has the advantage of hearing the witness and observing his conduct during trial, circumstances which carry a great weight in appreciating his credibility.[11]

In the case at bar, the trial court had seen the original copy of the demand letter and had been satisfied with the identification thereof by complainant Marcial De Jesus. We are not inclined to disturb said court's findings.

In light, however, of the rulings in the recent cases of *Vaca v. Court of Appeals*[12] and *Rosa Lim v. People*,[13] the Court deems it best in the instant case, to limit the penalty for violation of B.P. Blg. 22 to payment of a fine in the amount of P150,000.00. Following our rationale in the aforesaid cases, the Court believes that it would best serve the ends of criminal justice if in fixing the penalty within the range of discretion allowed by Sec. 1, par. 1, the same philosophy underlying the Indeterminate Sentence Law is observed, namely, that of redeeming valuable human material and preventing unnecessary deprivation of personal liberty and economic usefulness with due regard to the protection of the social order.[14]

Consequently, we delete the prison sentence of six (6) months and one (1) day. The imposition of a fine of P150,000.00 and payment of civil indemnity in the amount of P130,000.00, as well as the costs of the suit, are appropriate and sufficient.

WHEREFORE, in view of the foregoing, we AFFIRM the decision of the Court of Appeals WITH THE MODIFICATION that the sentence of imprisonment is DELETED. Petitioner is hereby ordered to pay a fine of P150,000.00. He is likewise ordered to pay civil indemnity in the amount of P130,000.00, and the costs of the suit.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] Rollo, pp. 52-53.

[2] Id., at 57.

[3] Id., at 45.

[4] Id., at 13.

[5] Id., at 10.

[6] Id., at 11.

[7] 233 SCRA 301 (1994).

[8] *Lozano v. Martinez*, 146 SCRA 323 (1986).

[9] Rollo, pp. 37 & 39.

[10] Id., at 56.

[11] *Ibasco v. Court of Appeals*, 261 SCRA 449, 460-461 (1996).

[12] 298 SCRA 656, 664 (1998).

[13] G.R. No. 130038, 18 September 2000.

[14] *Vaca v. Court of Appeals*, supra; *Rosa Lim v. People*, supra.

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